



C.R.P.(MD) No.31 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|               |            |
|---------------|------------|
| Reserved on   | 18.11.2024 |
| Pronounced on | 04.12.2024 |

CORAM

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**C.R.P.(MD) No.31 of 2023**

and

**C.M.P.(MD) No.195 of 2023**

1.Janaki

W/o.Late.R.Athilingam

2.Prasithan

S/o.Late.R.Athilingam

3.Minor.Arul Prasithi

D/o.Late.R.Athilingam

represented by her mother/  
the first petitioner herein

... Petitioners

Vs.

1.V.O.S.Sivasubramani

S/o.V.O.Sivasubramani Chettiar

2.Sri Sakthi Vinayagar Power System and Trading,  
Rep. by its Proprietor Mr.R.Athilingam (Died),  
Opposite to S.M.B.School,  
G.T.N.Salai, Dindigul Town,  
Dindigul District.

R.Athilingam (Deceased)



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3.K.Jayabarathi  
S/o.Kannaiah Pillai

... Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decree dated 25.11.2022 made in I.A.No.8 of 2022 in O.S.No.99 of 2015 on the file of the Additional District Court, Dindigul.

For Petitioner : Mr.G.Gomathi Sankar

For R1 : Mr.S.A.Ajmalkhan

For R2 : No appearance

### **ORDER**

This Civil Revision Petition has been filed against the order dated 25.11.2022 passed by the Additional District Court, Dindigul, in I.A.No.8 of 2022 in O.S.No.99 of 2015.

2. The revision petitioners are the fourth to sixth defendants in the above suit. The suit in O.S.No.99 of 2015 was filed by the first respondent/plaintiff for the recovery of money from the first defendant firm, namely, Sri Sakthi Vinayagar Power System and Trading (hereinafter referred to as 'first defendant firm'). During the pendency of the suit, the proprietor of the first defendant firm, i.e., the husband of the



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first revision petitioner and the father of the second and third revision petitioners, died. Therefore, the first respondent/plaintiff filed an application in I.A.No.8 of 2022 for amendment of the cause title by including the names of the revision petitioners as the fourth to sixth defendants in the suit.

3. The same was resisted on the side of the revision petitioners/fourth to sixth defendants, who stated that the first defendant firm was closed in the year 2013 itself and, therefore, it is not necessary to include the names of the revision petitioners/fourth to sixth defendants as proprietors of the said firm in the cause title.

4. The trial court, by the impugned order, allowed the the said application for amendment. Aggrieved by this, the present Civil Revision Petition has been filed.

5. The learned counsel for the revision petitioners/fourth to sixth defendants would submit that the first defendant firm, the proprietor of which, Mr.R.Athilingam, died in the year 2016, was not in existence after the year 2013; that the revision petitioners/fourth to sixth defendants are



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not the representatives of the first defendant firm and are not running the same, and therefore, the said application for amendment is not necessary; that there was a Sale Agreement between the first respondent/plaintiff and the second respondent/third defendant with regard to the punja land, and since the said Sale Agreement expired, the first respondent/plaintiff filed the present suit for recovery of money based on the suit cheque issued by the second defendant, the deceased Mr.R.Athilingam, on behalf of the first defendant firm; that since the first defendant firm is not in existence and the cheque was issued on behalf of the first defendant firm, the revision petitioners/fourth to sixth defendants, who are not the representatives of the firm and are not running the same, are not liable to pay the suit claim; that since the first defendant firm was closed in the year 2013 itself and the proprietor of the same had died in the year 2016, the legal heirs of the proprietor of the firm cannot be impleaded as the legal representatives of the said firm, and hence, the proposed amendment to include the names of the revision petitioners in the cause title as proprietors of the first defendant firm is unsustainable; and that, however, the trial court, without considering the above facts, erroneously allowed the said application for amendment of the cause title.



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6. The learned counsel for the revision petitioners/fourth to sixth defendants would further submit that since the sole proprietor of the first defendant firm has died, the legal heirs of the proprietor are not responsible for the suit claim. To support his contention, he relied upon the judgment of the Hon'ble Supreme Court in ***Mrs.Anita Malhotra v. Apparel Export Promotion Council and Another***, reported in **2012 (1) SCC 520**, in which, it has been held as follows:

*“16) In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as certified copy of annual return dated 30.09.1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings. Consequently, the criminal complaint No. 993/1 of 2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A3) is quashed and the appeal is allowed.”*

7. On the other hand, the learned counsel for the first respondent/plaintiff would submit that the second defendant, the deceased



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Mr.R.Athilingam, was the proprietor of the first defendant firm and, since he died, the revision petitioners/fourth to sixth defendants were impleaded as the legal heirs of the said deceased Mr. R. Athilingam, but the cause title was not amended; that hence, the first respondent/plaintiff was constrained to file the above amendment application to amend the cause title by including the names of the revision petitioners/fourth to sixth defendants as the proprietors of the said firm; that without showing the revision petitioners/fourth to sixth defendants as the proprietors of the first defendant firm, the first respondent/plaintiff cannot succeed in the suit; and that, hence, the trial court has rightly allowed the said application, which calls for no interference.

8. Heard on both sides. Records perused.

9. The above suit was filed by the first respondent/plaintiff against the first defendant firm and the proprietor, namely Mr.R.Athilingam, and the second respondent/third defendant, for recovery of money. During the pendency of the suit, the said proprietor, Mr.R.Athilingam, died, and thereafter, the legal heirs of the said Mr.Athilingam were impleaded as the fourth to sixth defendants in the above suit, who are the revision



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petitioners. Thereafter, the first respondent/plaintiff filed an application in I.A.No.8 of 2022 to amend the cause title by including the names of the revision petitioners/fourth to sixth defendants as the proprietors of the first defendant firm. Though the revision petitioners/fourth to sixth defendants contend that the first defendant firm was closed in the year 2013 itself, that they are not the legal representatives of the said firm, and that since the cheque was issued only on behalf of the first defendant firm, they are not liable to pay the suit claim, all matters are to be dealt with by the trial court only at the time of trial.

10. On reading the judgment of the Hon'ble Supreme Court in ***Mrs.Anita Malhotra*** case cited *supra*, it is noted that in the said case, on the date of issuance of the cheque, the Director of the company had resigned from the post of Directorship. However, the facts of the present case are different from those of the said case.

11. Moreover, the amendment should be permitted to find a solution to the controversy between the parties. Unless the original cause of action is changed and a new cause of action is introduced, the amendment cannot be permitted. In the present case, the original cause of action is not



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changed and a new cause of action is not introduced. Therefore, this Court is of the view that the trial court has rightly allowed the amendment application filed by the first respondent/plaintiff, which calls for no interference. The impugned order is, therefore, confirmed.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.12.2024

Index: Yes/ No  
Neutral Citation: Yes / No  
Speaking Order/Non-Speaking Order

JEN

Copy To:

The Additional District Judge,  
Dindigul,  
Dindigul District.



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**K.GOVINDARAJAN THILAKAVADI, J.**

JEN

Pre-Delivery Order made  
in  
C.R.P.(MD) No.31 of 2023  
and  
C.M.P.(MD) No.195 of 2023

04.12.2024